

APPEAL NO. 93078

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1993). On December 15 and 16, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that respondent's (claimant herein) husband (deceased herein) died as a result of a compensable truck collision injury occurring on (date of injury). Appellant (carrier herein) asserts that there was insufficient evidence to support a finding that deceased's injuries in the accident led to a vertebral artery dissection and there was insufficient evidence to support the finding that a dissection occurred which caused the death. Claimant replied that the evidence was sufficient to support the hearing officer's decision.

DECISION

Finding that the evidence is sufficient to support the findings and conclusions and that the evidence and findings and conclusions sufficiently support the decision and order, we affirm.

The Statement of Evidence, Findings of Fact, and Conclusions of Law are thorough and represent an excellent description of the case; we adopt them. The Discussion reveals the weight and credibility that the hearing officer placed on various parts of the evidence. A brief summary will be provided in this opinion to indicate the nature of the evidence available to the hearing officer and the Appeals Panel in reaching our respective decisions.

The deceased had been employed by (emplpyer) for approximately 17 years. He was a truck driver, 55 years old, overweight, on medication for hypertension and diabetes, and smoked cigarettes. On (date of injury) deceased was driving within the course and scope of employment when he ran into the back end of a very slow moving highway department vehicle accompanying a striping machine. Upon hitting that vehicle deceased's truck then collided with a concrete barrier, damaging it. The truck sustained some damage to its drivability, and when deceased afterwards drove it away it apparently sustained more damage. Deceased told his supervisor and others that he was not hurt. His wife, claimant, testified, though, that in the week after the wreck, claimant vomited (not a common occurrence) had headaches, slept fitfully, and was lethargic or depressed. He once asked his wife if there was a cut or bump on the back of his head because it felt strange. He was confused as to which day of the week it was. The only injury from the accident that he spoke of to his wife involved his hip. The claimant said that deceased did not incur any injury other than the truck accident in this period. There was no dispute that the claimant was the sole beneficiary of the deceased under the provisions of Article 8308-4.42 of the 1989 Act.

The deceased died on July 5, 1992. The death certificate shows that his heart stopped because of a brainstem infarct resulting from basilar artery dissection caused by the accident described. An infarct refers to the killing of tissue because blood does not get

to it--commonly this results from a blood clot obstructing the artery that feeds the tissue; it can also occur when the inner lining of the artery develops a laceration allowing the blood to be diverted from the main channel into an area between the inner and outer areas of the vessel. The inner lining can expand and rupture back into the channel or it can expand, while being contained, to a point where it cuts off the flow of the artery. While the death certificate used the phrase "basilar artery dissection," the testimony of the two physicians for the deceased and his medical records show that the dissection began below the basilar artery in the vertebral artery and extended into the basilar artery. Because of its location, the problem was not operable.

On June 28, 1992 deceased, after cancelling a planned trip to visit relatives in Lampasas, went with his wife to Baytown to visit other family. When he began to eat that afternoon, he dropped a fork and his soft drink. The family took him to the hospital. The emergency room transferred him to (Hospital), Texas, to a neurosurgery service. It quickly became apparent that surgery would not be the therapy of choice and deceased was transferred to neurology, where (Dr. VH), a board certified neurologist, who teaches and is on the staff at (employer) and MD hospitals, became his principal physician. In a deposition Dr. VH stated that in his opinion the deceased was injured in the accident of June 18th and that such injury produced the condition that led to death. Dr. VH described that a dissection is usually caused by trauma. He characterized the vertebral arteries as being at the back of the neck protected by the spine, but they can be injured by a torsion movement, including a golf swing or an automobile accident. He added that it does not necessitate impact with a hard object. The tear often starts below the basilar artery, which is within the skull, in the vertebral artery just below the skull and may extend to the basilar. (In addition to the vertebral arteries at the back of the neck, carotid arteries also feed the brain and are located more to the front of the neck.) While Dr. VH said it would not be usual for a person who suffered this injury to continue to work for a week, it was not impossible because the time for tissue to start dying usually takes one to six days because the artery is not occluded immediately after the injury. Dr. VH believed that deceased was injured on (date of injury).

Dr. VH said that the best diagnostic tool for determining the type of injury is the angiogram. He said that (Dr. K) did the angiogram, which showed the dissection. He said that Dr. K would have seen that plaque caused the obstruction if that had been the case, but he did not see that. (He later said that the way the vessel narrowed, the "string sign" indicated dissection and also said that the dissection occurred at a curve in the vessel where one would expect it to occur.) He answered that the deceased probably would not have been placed in this condition if there had not been trauma and thinks that if there had been a clot, the effect would have been much more immediate. He does not think that hypertension caused the condition and refers to the dissection as "proven." On cross-examination, Dr. VH pointed out that younger people often are the ones who have dissections. When a question whether autopsy would have shown more conclusively what the condition was (had one been done), Dr. VH said that the angiogram, while not absolute,

makes it in this case "95 percent" sure that events other than an arterial dissection did not cause the infarct. He added that because of the way the brain is removed at autopsy, in this case the angiogram can actually be more definitive. He also commented that there was no history of transient ischemic attacks which could indicate impaired flow of the arteries in question.

At the hearing, (Dr. T) testified on behalf of the carrier. Dr. T is a board certified neurosurgeon with approximately 40 years experience as a medical doctor. He reviewed certain records of the deceased and concluded that deceased's history of problems with alertness could have been connected to impaired cerebral blood flow. Blood flow is often affected by clots. He added that the deceased was in a high risk group for transient ischemic attacks. He agreed that angiograms are used to gather information for a diagnosis, but his review of the angiograms in question found them to be of such poor quality that they only showed an obstruction and were insufficient to make a diagnosis. Dr. T, as a result, did not see a dissection in the angiogram. Dr. T viewed the onset of the problem as occurring with the problems deceased had during his meal (discussed previously) and characterized it as extremely sudden. He characterized this suddenness as consistent with a clot and the underlying arteriosclerotic disease. Dr. T has never seen a basilar dissection in his many years of practice and said that it was a very rare event. He believes that deceased probably had a transient ischemic attack at the time of the accident, causing the accident; later a thrombosis occurred which caused the death. In his opinion, death was not caused by the accident. On cross-examination, Dr. T acknowledged that he gave his opinion on this case prior to seeing the angiograms in question. He guessed that he has done 150,000 angiograms in his practice while Dr. K, who interpreted the angiograms, is in a specialty that is only eight to 12 years old. Dr. T agreed that the "string sign" in a basilar artery would be indicative of dissection. Dr. T gave the opinion that a person's head needed to impact something in order to have internal injury of the brain. In answer to questions by the hearing officer, Dr. T agreed that relatively minor neck torsion can result in dissection of a vertebral artery that extends into the basilar artery.

The police officer who investigated the truck accident of June 18th testified that in his opinion, deceased was not injured in the accident. There were skid marks leading to the collision. (Mr. M) testified that he is the general manager of the company and after the accident, deceased told him repeatedly that he was not injured. Mr. M believed he did not get a complete account of the accident from deceased and said deceased had been inattentive before and after the accident.

Dr. K testified that he is not board certified in neuroradiology because there is no such certification yet. After medical school, Dr. K did a radiology residency at Duke and a two year fellowship in neuroradiology at medical center, plus one year in neuroradiology and interventional neuroradiology training. Dr. K discussed the fact that in his specialty, he constantly does angiograms and believes he is very proficient in both doing them and

interpreting them. He discussed the series of angiograms he did on the deceased, pointing out that the vessel in question narrowed before the dye disappeared. The injury began in the distal vertebral artery with the dissection extending into the basilar artery. Dr. K agreed that a basilar artery dissection alone would be very rare. Dr. K testified that he saw the classic signs of dissection in this case. He added that it was not necessary to hit your head to cause this--an abrupt turning motion can do it. Dr. K recalls that none of the doctors at Herman Hospital disagreed with his diagnosis. He is aware of the other medical problems the deceased had, but agrees with Dr. VH that the diagnosis of vertebral basilar dissection is "firm." On cross-examination, Dr. K agreed that a neurosurgeon with experience since the early 1950s would have significant experience with angiograms, but questioned the figure of 150,000; he said it was possible but thought that it would take about 150 years to do that many. Dr. K has done approximately 500 in his practice. He agreed that different doctors can interpret angiograms differently and that an autopsy would probably provide "definitive" proof of the diagnosis. In answer to questions of the hearing officer, Dr. K said that the angiograms in question were "average" and that any qualified neuroradiologist should be able to interpret them and come to the same conclusion he came to. He described the anatomy of blood vessels in detail and commented that in directing the tube up the carotid artery, he did not see severe narrowing of the artery. He felt he was safe in directing the tube forward in the vertebral artery because generally if that area had significant arteriosclerotic disease, such disease would have shown up elsewhere, such as in the carotid artery. Dr. K said that the probable cause of death was the vertebral artery dissection secondary to trauma which occluded the vessel causing death of tissue. Dr. K pointed out that if Dr. T thought the films were so bad that dissection could not be diagnosed, then they would also be insufficient to see arteriosclerotic disease in order to make that diagnosis.

The hearing officer is the sole judge of the weight and credibility of the evidence. See Article 8308-6.34(e) of the 1989 Act. He judges credibility, assigns weight, and resolves conflicts in the evidence. See Ashcraft v. United Supermarkets, Inc., 753 S.W.2d 375 (Tex. App.-Amarillo 1988, writ denied). As trier of fact, he is allowed to make reasonable inferences and deductions from the evidence. See Harrison v. Harrison, 597 S.W.2d 477 (Tex. Civ. App.-Tyler 1980, writ ref'd n.r.e.). Similarly to other evidence, conflicting expert evidence is also a matter for the trier of fact to resolve and assign weight. See Atkinson v. U.S. Fidelity & Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.).

The medical evidence presented by both sides effectively addressed the issue before the hearing officer. Dr. T pointed out that arteriosclerotic disease is the main cause of most occlusions of arteries. His opinion that deceased suffered a transient ischemic attack before the accident was not shared by the other doctors. The hearing officer could conclude from the deceased's lack of history of transient ischemic attacks of a kind that could affect his consciousness and the skid marks preceding the collision that there was no

indication of a transient ischemic attack. He could infer, in addition to the opinions given by Dr. VH and Dr. K, that when the deceased's truck hit another vehicle and damaged a concrete barrier, coupled with deceased's description of hurting his hip, some deceleration and movement of deceased within the cab of the truck took place.

The testimony of Dr. K and the deposition of Dr. VH, two well qualified physicians who treated the deceased, strongly declared that in reasonable medical probability, the claimant suffered a dissection of the vertebral basilar artery which caused his death. Both said that the dissection was caused by trauma. Even Dr. T agreed that a dissection of a vertebral artery extending into the basilar artery could be caused by relatively minor trauma. The motor vehicle accident, and the deceased's complaint to his wife of hurting his hip, were evidence of trauma. The hearing officer could weigh the fact that Dr. T gave his opinion prior to reviewing the diagnostic films, which all agreed were a key element in making a diagnosis, as indicative of a willingness to provide a diagnosis without the benefit of pertinent elements of the medical file.

The carrier's assertions of error in finding that the accident caused trauma to the vertebral artery and that a vertebral basilar dissection caused the death are not supported by the evidence. On the contrary, the decision and order of the hearing officer are sufficiently supported by the evidence and are not against the great weight and preponderance of the evidence. See In Re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1952). The decision is affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge